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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,730

06/06/2006

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7590

07/24/2009

EXAMINER

BAINBRIDGE, ANDREW PHILIP

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

07/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/581,730

Applicant(s)SCHWASS, TREVOR DOUG
ANTHONY**Examiner**

ANDREW P. BAINBRIDGE

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-32, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 25-27, 30-32 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-22, 24, 28 and 35 is/are rejected.
- 7) ☒ Claim(s) 23 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/17/2009, 6/6/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. The Examiner acknowledges the Applicant's selection of Invention 1: the Material Discharge Apparatus, and also the selection of Species 1: Figures 1-2 (no computer controls) with traverse as noted in the Applicant's Arguments and Remarks dated June 29, 2009. The Applicant argues that Group 1 is related to "an apparatus" (last line of page 1 of the Response to Restriction Requirements) and that Group 2 is directed to "a computer controlled process". Applicant further traverses the Election of Species requirement because Applicant believes that Figures 1-4 all depict "a single apparatus", only in differing levels of detail, none of which are separate or distinct enough to be patentably distinct inventions. The Examiner first disagrees with the Applicant's depiction of the Election of Species requirement. The Examiner believes that Figures 1-2 is a first embodiment and that figures 3-4 are second embodiment. Figures 1-2 show a first embodiment of the invention, one with a support beam 11 that has a valve 7 secured a specific distance below the beam 11, and a discharge hopper 3, 6 that is secured to the support beam 11 by a resilient spring 13 such that the gap for discharge 5 is automatically expanded or shrunk by the gravity stretching the spring 13 as more material is added into the hopper 3, 6. Figures 3-4 show a second embodiment of the invention, with a main support beam 36 that has a load cell 43-44 that directly connects to a discharge hopper 22-23, the load cell sending its information to a valve controlling solenoid 35 to lift or lower the valve 27 as required depending on the information from the load cell. Species 1 has no computer controls, and the valve is in a fixed position,

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and Species 2 has computer controlled solenoid and the hopper is in a fixed position. Therefore Species 1 and 2 are patentably distinct. The Examiner secondly disagrees with the Applicant's depiction of the Restriction requirement between Group 1 and Group 2, Group 1 being "an apparatus and to the extent necessary the specie represented by Figures 1 and of the Specification" and Group 2 being "a computer controlled process". The Restriction requirement was between Invention 1: the *Apparatus* of the Discharge Hopper and Invention 2: the *Process* of using the Discharge Hopper. The Restriction requirement was and is designed to force the Applicant to decide which invention he or she wishes to pursue: the Apparatus, or the Method claims.

For the sake of Examination efficiency, and in consideration that the Examiner changed around the first Restriction/ Election requirement, the Examiner has examined the claims that relate to Invention 1 (the Apparatus of a Discharge Hopper), Species 1 (Figures 1-2, the Discharge Hopper without any computer controlled solenoid). **After reviewing the newly amended claims, claims 20-24, 28-29 and 35 were examined and claims 25-27, 30-32 and 34 were not examined and are withdrawn** as they relate to an unelected Invention 1, Species 2 (the apparatus with computer controlled solenoid) or to Invention 2 (the method claim 34).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-21, 24 and 35 are rejected under 35 U.S.C. 102(b) as being

anticipated by US 2,788,809 (A.F. Paton).

4. Paton in figures 1-3 discloses a material discharge device 10 that has a conical hopper 34 that empties into an area directly below itself 33 (see figure 3) and has an opening at its “top” 12 (see figure 3) with a centrally aligned bell shaped valve 22 that forms a discharge gap 20, 24 within the tapered hopper 15 such that material is emptied by gravity, the valve 22 and the hopper 10 designed to move in relation to one another 28, 36-38 to control the size of the discharge passage (see outlined valve 22).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. **Claim 22 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Paton in view of US 4,410,111 (Barger).
8. Paton has all of the elements of claim 22 including a hopper 10 suspended below support frames 31, but does not teach the valve being suspended from below the support frame. Barger in figures 1-3 teaches a valve 40 that is suspended by wires 44, 46, 48 that upwardly connect to support frames 58, 60, 62. It would be obvious to one of ordinary skill in the art to adapt Barger to Paton because Barger teaches a way to suspend the valve from inside the container which would be a convenient location for the valve actuating apparatus in many applications.
9. **Claim 28 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Paton.
10. Paton explicitly has all of the elements of claim 28 except for the hopper being made of a rotary molded plastics material. The manufacturing method of rotary molded plastics is well known in the art and is an example of an obvious design choice, which a person of ordinary skill in the art would recognize as a good manufacturing method choice for a hopper of the Paton variety.

Allowable Subject Matter

11. **Claims 23 and 29 would be allowable if rewritten** to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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12. The following is a statement of reasons for the indication of allowable subject matter: Although Wahl's "Vibratory Bin Activator" (US 3,853,247) does teach a suspension mounting 13 that suspends the hopper from a frame, there is no reference or valid combination of references that teaches a hopper that is suspended from expanding coil springs that serve to expand or shrink the size of the discharge gap depending on the weight inside the hopper. As a result, allowable subject matter was indicated.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754